

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2722 OF 2022

Dudhganga Gramin Bigar Sheti Sahakari

Pat Sanstha Maryadit

..Petitioner

Versus

Uday Kakaso Patil & Ors.

..Respondents

Mr. Tejpal S. Ingale, for the Petitioner.

Mr. Satish Kumbhar, for the Respondent No.1.

Mrs. V. S. Nimbalkar, AGP for Respondent Nos.5 & 6.

CORAM : NITIN W. SAMBRE, J.

DATE : 26th AUGUST, 2022

PC.

1. The petitioner, a credit co-operative society has questioned the order dated 1st March, 2019 passed by Assistant Registrar, Co-operative Societies, whereby recovery certificate issued by him on 11th October, 2018 under Section 101 of the Co-operative Societies Act (hereinafter referred to as “the said Act” for the sake of brevity) came to be set aside. The said order of setting aside recovery certificate passed by respondent No.6 was confirmed by the respondent No.5/Divisional Joint Registrar in revisional jurisdiction and the revision of the petitioner came to be dismissed on 5th February, 2020. As such, this petition.

2. Respondent No.1 claimed to have obtained loan facility

by hypothecating his vehicle for an amount of Rs.4,90,000/- as on 25th March, 2014. The said loan was further enhanced to Rs.6,49,000/- on 25th March, 2016. The aforesaid amount alleged to have been credited to the saving bank account of the respondent No.1/ borrower on 13th April, 2016. The amount which was deposited to the account of respondent/borrower was duly withdrawn by him and has failed to clear the loan. Having noticed that the account of the respondent went in category of non-performing assets, the petitioner initiated proceedings under Section 101 of the said Act for issuance of recovery certificate before the respondent No.6/Assistant Registrar. Vide order dated 11th October, 2018, the respondent/Assistant Registrar issued recovery certificate for recovery of amount of Rs.9,38,381/-.

3. It appears that the said respondent No.1 filed additional written notes of argument dated 4th January, 2019 which prompted him to issue notice to the petitioner for rehearing of the said proceedings. The respondent No.6 accordingly vide its order dated 1st March, 2019 has rejected the prayer of the petitioner for issuance of recovery certificate with an observation that the proceedings involves disputed question of facts and it shall be open for the petitioner to move before the Co-operative Court in a dispute under Section 91 of the said Act.

4. The revision of the petitioner being Revision No.177 of 2019 questioning the aforesaid order on the ground of absence of

authority with the respondent No.6/Assistant Registrar to review his own order was also dismissed on 5th February, 2020.

5. While questioning both these orders i.e. order dated 1st March, 2019 passed by respondent No.6 which was confirmed by respondent No.5 in order dated 5th February, 2020, Mr. Tejpal Ingale, counsel appearing for the petitioner would urge that Section 101 of the said Act and Rules framed thereunder does not provide for review of the order. According to him, once the respondent No.6 pursuant to the application dated 10th September, 2018 of the petitioner society ordered issuance of recovery certificate on 11th October, 2018, the same order ought not to have been recalled or modified or reviewed. So as to substantiate his claim, he has drawn support from the provisions of Section 101 of the said Act and the relevant rules framed thereunder. He would further urge that even revisional authority while passing the order impugned has not considered the aforesaid legal issue. As such according to him, both the orders impugned are not sustainable.

6. Mr. Satish Kumbhar, counsel appearing for the respondent No.1/borrower would invite attention of this Court to the observations of respondent Nos.5 and 6 in the orders impugned. According to him, it is settled position of law that the recovery certificate cannot be ordered to be issued under Section 101 of the said Act, if it is demonstrated that the liability is bonafide disputed. He would then urge that the factual matrix viz. the date of loan

dated 13th April, 2016, the resolution sanctioning the loan on 11th April, 2016, the absence of relevant documents has rightly prompted the authority to pass the order impugned. According to him, the order impugned is just and proper.

7. I have appreciated the aforesaid submissions.

8. The fact about the respondent No.6/Assistant Registrar has issued recovery certificate by order dated 11th October, 2018 is not in dispute. The said order of issuance of recovery certificate speaks of certification of recovery of amount of Rs.6,49,000/- with 15% interest and other expenses of Rs.8,850/-.

9. The said order appears to have been undone vide subsequent order dated 1st March, 2019 that too without referring to the order dated 11th October, 2018. The aforesaid impugned order dated 1st March, 2019 amounts to reviewing of the earlier order dated 10th October, 2018. It is a settled position of law that the power to review has to be provided by express provision and cannot be inferred impliedly. In such an eventuality, Mr. Tejpal Ingale, counsel appearing for the petitioner is justified in claiming that the order impugned dated 1st March, 2019 is without any legal authority or jurisdiction.

10. Once it is held that the order impugned dated 1st March, 2019 is passed by the authority without jurisdiction, the necessary

consequences will follow viz. the order passed in revision impugned herein on 5th February, 2020 is also not sustainable.

11. However, considering the submissions made by Mr. Satish Kumbhar on the facts of the case viz. the denial of the liability to pay the loan amount based on certain objections in regard to the processing of the loan account, it will be appropriate, in my opinion, even to set aside the earlier order of issuance of recovery certificate viz. the certificate dated 11th October, 2018 passed by respondent No.6. The respondent No.6, in my opinion, needs to reconsider the entire gamut of the matter at the behest of parties to the petition as to whether the case of the petitioner fits into the very requirement under Section 101 of the said Act.

12. Once all the orders impugned in the petition, so also the order dated 11th October, 2018 passed in exercise of powers under Section 101 the said Act is quashed and set aside, the option left with the parties is to appear before the respondent No.6 authority with their respective rival claims and order to adjudicate the issue afresh. In this background, the petition stands allowed.

13. The parties hereto are directed to appear before the Assistant Registrar on 26th September, 2022.

14. The Assistant Registrar/respondent No.6 is directed to decide the application of petitioner for issuance of recovery

certificate afresh without being influenced by the earlier orders or the present order of remand.

15. The respondent No.6 shall decide such claim expeditiously and in any case within period of six months from the date of the parties appear before him.

[NITIN W. SAMBRE, J.]